

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HOWARD GLOVER)	
Claimant)	
VS.)	
)	Docket No. 223,759
MCARTHUR PARK PROPERTIES)	
Respondent)	
AND)	
)	
TRAVELERS INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from the Preliminary Hearing Order of Administrative Law Judge John D. Clark, dated July 29, 1997, wherein the Administrative Law Judge granted claimant medical benefits through James Gluck, M.D., as the authorized physician.

ISSUES

Respondent raises the following issues for Appeals Board review:

- (1) "Whether notice of a preliminary hearing was properly given to respondent."
- (2) "Whether there is any evidence in the record to establish the compensability of the claim."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant's employer, Midland Property Management Inc. (Midland), and its insurance carrier, Travelers Insurance Company, objected to the preliminary hearing Order issued by Administrative Law Judge John D. Clark on July 29, 1997. The Order of Judge Clark was issued against respondent, McArthur Park Properties, the respondent listed by claimant on both its Application for Hearing E-1 and on its Application for Preliminary Hearing E-3 filed June 26, 1997. Respondent contends McArthur Park Properties is a nonentity and is not the respondent/employer of claimant. Respondent contends that claimant is employed by Midland, who is insured by Travelers.

At the preliminary hearing, claimant requested medical treatment for an injury suffered. The only information provided regarding claimant's accidental injury came from claimant's attorney, who proffered, "My claimant was run over by a golf cart injuring his left hand and arm." There was no indication as to the time or date of the injury, nor as to the activities being performed by claimant at the time of the injury.

K.S.A. 1996 Supp. 44-501 requires personal injury by accident arising out of and in the course of employment and places the burden of proof upon claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See also K.S.A. 1996 Supp. 44-508(g).

In this instance, the only information provided of claimant's injury and the circumstances leading up to claimant's injury was that provided by claimant's attorney at the preliminary hearing. There was no evidence proving that claimant's accidental injury arose out of his employment with respondent or whether his accidental injury occurred in the course of claimant's employment with respondent. Both elements must be proven by a preponderance of the credible evidence in order for claimant to qualify for benefits under the Kansas Workers Compensation Act.

In reviewing the evidence, the Appeals Board finds insufficient evidence to connect claimant's being run over by a golf cart with claimant's employment with respondent or to find claimant entitled to benefits under the Kansas Workers Compensation Act.

In addition, K.S.A. 44-534a, as amended, obligates a party to provide notice to the adverse party of an intent to file an application for hearing. It further requires notice to the parties of the date set for the hearing.

While notice may have been provided to McArthur Park Properties of both claimant's claim and the preliminary hearing time and date, there is no indication that Midland was ever provided notice of either. Claimant should have been aware of the identity of his employer, since that identity was listed on claimant's paychecks. The failure by both claimant and the Administrative Law Judge to provide the requisite notice to the respondent, Midland, of the claim and the time and date of preliminary hearing, as required

by K.S.A. 44-534a, as amended, necessitates this matter be remanded to the Administrative Law Judge for further proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated July 29, 1997, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
William L. Townsley III, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director